

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK**

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ALAN QUINONES,

Plaintiff,

-vs-

COMPLAINT

**CITY OF BINGHAMTON, RICHARD DAVID,
Mayor of the City of Binghamton, in His Official
and Individual Capacities, JOSEPH ZIKUSKI,
Chief of Police for the City of Binghamton, In His
Official and Individual Capacities, and
JOHN RYAN, Assistant Chief of Police for the City of
Binghamton, in His Official and Individual Capacities,**

Defendants.

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PRELIMINARY STATEMENT

Alan Quinones is of Hispanic origin and joined the Binghamton Police Department as a patrolman in March 2008. He has been consistently and systematically the victim of discriminatory treatment based on his natural origin ranging from Acting Assistant Chief John Ryan referring to him as “Ricky Ricardo”, a character from the I Love Lucy show back in the 1960s, to mimicking him in a derogatory manner when he was utilizing Spanish in the course of fulfilling his responsibilities. In addition to ridicule and humiliation he was passed over for sergeant promotion because of his Hispanic origin and while promoted to sergeant in 2012 and lieutenant in 2016 he would likely have been further advanced in his career but for the discriminatory conduct based on his Hispanic origin. This continues to the present time. He has worked in intelligence and crime prevention, has experience writing grants, and is the overall

most qualified candidate for the Captain position but is not being promoted to the same. The claim for discriminatory conduct based on Hispanic origin is brought pursuant to 42 U.S.C. § 1981.

Plaintiff decided to speak out because in the summer of 2019 a claim of race discrimination was filed by patrolman Christopher Hamlett who alleged he was denied an assignment to detectives because the Capt. Of the detectives, John Ryan, refused to have a black male or woman working in detectives. Plaintiff was aware Ryan was racist, and was interviewed by personnel director Patricia Keppler corporation counsel Ken Frank and told them Chief Zikuski admitted Ryan was a racist specifically told him Hamlett was not being assigned to detectives because Ryan did not want him there because of his race.

When Chief Zikuski learned plaintiff told Keppler and Frank that Zikuski admitted to him that Ryan was a racist Zikuski immediately engaged in retaliatory measures against the plaintiff ranging from bringing a frivolous disciplinary action to attempting to undermine his authority as lieutenant by having other officers ignore or otherwise disregard the plaintiff's orders in an effort to drum up more charges against plaintiff. He also sought to remove plaintiff from his position as desk lieutenant and sought to place him on the road, which generally is a sergeant assignment, in an effort to humiliate him and send a message to the rank-and-file to demonstrate what will happen if they do not support the administration's position. He also learned through other officers that the Chief said, plaintiff's career is "done".

Plaintiff contends that the highest authorities within the City including defendant Mayor David knew or should have known of the discriminatory conduct based on his Hispanic origin yet did nothing. He further asserts Zikuski's retaliatory measures taken because he told the truth and submitted an affidavit regarding Hamlett being denied the detective assignment because of

the color of his skin have caused him substantial embarrassment, humiliation, and have chilled his First Amendment rights that he now seeks relief for pursuant to 42 U.S.C. §1983.

PARTIES

1. Plaintiff Alan Quinones resides at 75 Aldrich Avenue, Binghamton, NY 13903.
2. Defendant City of Binghamton is a public municipality responsible for all public affairs including law enforcement in the City of Binghamton.
3. Defendant Richard David is the Mayor of the City of Binghamton and as such Chief Executive Officer and is sued both in his official capacity and individually.
4. Defendant Joseph Zikuski is the Chief of Police for the City of Binghamton and has authority over all personnel matters within the police department and is sued both in his official capacity and individually.
5. Defendant John Ryan is Acting Assistant Chief of Police for the City of Binghamton and is sued both in his official capacity and individually.

JURISDICTION

6. This Court has federal question jurisdiction pursuant to 28 U.S.C. §1331.

VENUE

7. All actions complained of herein occurred within the confines of the jurisdiction of the United States District Court for the Northern District of New York, and venue is proper in this judicial district under 28 U.S.C. §1391(b)(2), in that a substantial part of the events or omissions giving rise to the claim occurred in the Northern District of New York.

STATEMENT OF FACTS

8. Plaintiff joined the Binghamton Police Department as a patrolman in March 2008.
9. Plaintiff is of Hispanic origin and has been subjected to discriminatory conduct as is more fully set forth below.
10. The plaintiff has served eight and one half years active duty with the United States Marine Corps and was earning upwards of six figures in the construction industry when he took a significant pay cut to join the Binghamton Police Department as a patrolman.
11. After joining the Department as aforesaid plaintiff was passed over for the sergeant position despite having been most qualified on several occasions and was not promoted to sergeant until November 5, 2012.
12. That throughout the years plaintiff has been subjected to humiliation and ridicule such as Acting Chief John Ryan repeatedly calling the plaintiff “Ricky Ricardo” who was a character from the I Love Lucy show back in the 1950s and 60s.
13. In 2014 when plaintiff was working directly under Ryan he would be subjected to discriminatory conduct on a daily basis including the use of ridicule such as mimicking the plaintiff when he was speaking Spanish by imitating him in a derogatory manner which happened almost on a daily basis.
14. That Ryan would compare plaintiff to another officer, one Armando Marroquin of Hispanic origin and said that the plaintiff was “classy Spanish” while Armando was “Mexican Spanish”.
15. He would also make derogatory references to the plaintiff with comments such as, you are good jumping fences, and made references to plaintiff’s youth stating he ran with gangs, knew

how to steal cars and pick locks, despite the fact that plaintiff was never in trouble with the law, held after school employment throughout high school, and was in fact a model citizen throughout his youth and upon graduation from high school entered the Marine Corp.

16. Plaintiff suffered in silence because he was afraid if he rocked the boat he would lose his job.

17. Plaintiff was promoted to lieutenant in 2016 and has fulfilled his responsibilities with distinction.

18. That from time to time plaintiff would assist in background investigations of police applicants. On one occasion he reviewed the application of a candidate who was Puerto Rican and not hired, with the reason given that male family members had been arrested by the Department which plaintiff believes was a pretext since Caucasian officers have been hired with family members who have histories that were worse than the candidate who was rejected. The candidate who was rejected was decorated veteran who was wounded while serving in Iraq.

19. That the discriminatory conduct while primarily meted out by Capt. Ryan extended to the rank-and-file as reflected by the fact that in early July 2018 patrolwoman Erica Farber called patrolman Marroquin a “spic” several times in front of other officers.

20. That at the present time plaintiff is the most qualified candidate on the list for Captain.

21. This was also the case as of January of 2018 as the plaintiff had significant experience in grant writing, intelligence, crime prevention, in addition to the exemplary record he maintained during his tenure with the Department and was nevertheless passed over for captain by a Caucasian who was clearly less qualified than the plaintiff in that he had none of the plaintiff’s credentials and also had lower test scores.

22. That plaintiff sustained damages as a result of being discriminated against on the basis of

his Hispanic origin as set forth above and did not complain of the same because he did not want to lose his position with the Department.

23. That plaintiff suffers irreparable harm as a result of not being able to move forward and be in a position consistent with his credentials and is entitled to an order directing that he be promoted to the captain position, or at minimum, to be considered for the captain position without regard to race.

24. That plaintiff has no adequate remedy at law.

**RETALIATION WHICH PLAINTIFF SEEKS TO REMEDY
THROUGH 42 U.S.C. §1983**

25. That sometime in 2018 Christopher Hamlett approached the plaintiff and asked him for advice regarding applying for assignment to detective, and plaintiff advised him to go for it.

26. Hamlett applied for the detective assignment and was turned down.

27. That on July 2, 2019 Hamlett advised the plaintiff he was going to file a race discrimination claim with the personnel department and in fact did so.

28. That plaintiff advised he would support him in his decision and tell the truth with respect to any information he had relating to race discrimination existing in the Department.

29. That on or about July 16, 2019 plaintiff was told by Sgt. Nicholas Hardy that patrolman Tomazic stated the Chief said that both Hamlett's and plaintiff's careers are "done".

30. That on July 17 Hamlett advised the plaintiff he believed the race discrimination claim he filed with personnel was leaked and now the topic of conversation among the rank-and-file.

31. That plaintiff decided to call Personnel Director Trish Keppler and meet with her because of his concerns that his career was "done", and the fact that Hamlett's claim was now being discussed within the Department.

32. That on July 19 plaintiff met with Personnel Director Keppler, Corporation Counsel Ken Frank and told them of a conversation he had at Chris Bracco's retirement party when Zikuski discussed Ryan being a racist, something he had mentioned on numerous different occasions.

33. That in August 2019 Hamlett filed a complaint with the New York State Division of Human Rights alleging he was denied the detective position because of his race.

34. That Zikuski was already actively engaging in retaliatory measures against plaintiff by meeting with other patrolmen and patrolwomen to create scenarios that would reflect adversely on the plaintiff and perhaps open him to disciplinary proceedings.

35. Upon information and belief one such officer was Patrolwoman Theresa Johnson.

36. That on or about September 18, 2019 while Johnson was working at the police desk she refused to follow plaintiff's direction to identify callers when transferring incoming calls to other officers, opting instead to assert he was arresting her and then further escalating her behavior by banging her fist on a countertop directly in front of the plaintiff and then abandoning her post.

37. Plaintiff officially charged Johnson with insubordination and did so through a T- 38 form in which he fully documented the incident.

38. In the ordinary course of police practice this conduct would have been insubordination warranting disciplinary action.

39. That later that day Capt. Chapman advised the plaintiff that Johnson was going to come back and work at the police desk and plaintiff advised that in view of her outburst less than twenty four hours earlier it would not be a good idea to put her back in a desk position, since the danger of confrontation was obvious, and that he would go to personnel to address that issue immediately.

40. That plaintiff then went to personnel and advised Trish Keppler what happened and she

indicated that while she was sympathetic, she could not remove Johnson from her position.

41. Keppler asked the plaintiff to step out of her office so she could speak with Zikuski, and plaintiff agreed. She ultimately told him there was no resolution so he agreed to work on road patrol for the remainder of that shift.

42. Plaintiff was then not only advised that Johnson would not be charged with insubordination, but that plaintiff was being charged with insubordination by way of a T- 38 for not obtaining the Chief's permission to be absent from the departments COMPSTAT meeting.

43. That Zikuski further retaliated against plaintiff by attempting to remove plaintiff from the desk lieutenant position and have him work road patrol on a regular basis and plaintiff refused to give up his assignment as desk lieutenant.

44. That the aforesaid activities taken against plaintiff, namely, attempting to undermine his authority as a lieutenant by allowing a patrolwoman to act in a very belligerent manner in front of him, disobey orders and not be disciplined, having plaintiff assigned to road patrol, were retaliatory, aimed at humiliating plaintiff, and to send a message to the rank-and-file.

45. Upon information and belief, in addition to retaliating against the plaintiff as aforesaid Zikuski asked Capt. Ryan to research which policies could be brought to charge the plaintiff with misconduct.

46. That the retaliation against the plaintiff is ongoing.

47. That plaintiff remains number one on the captain's list but will not be given a fair opportunity to be considered for the position based on his own credentials because of the discriminatory and retaliatory treatment he is receiving at the hands of Zikuski and Ryan.

48. That despite the retaliatory measures taken against him the plaintiff nevertheless provided an affidavit to the attorney representing Hamlett in the human rights claim in which he related the

conversations in which Zikuski made racist remarks and told him the reason plaintiff was not given the detective assignment is because Capt. Ryan did not want him because of his race, said affidavit dated October 23, 2019 is incorporated herein by reference.

49. That another officer that has been the subject of retaliatory measures because he was also considered a Hamlett supporter is Sgt. Nicholas Hardy.

50. That Sgt. Rachel Patton carried out a negative contract form charging Hardy with misconduct and when asked why she took the unusual step of not advising other superior officers on her shift before going directly to the administration she told him she was “instructed” to go directly to police administration with “everything”, i.e. to Zikuski.

51. That on or about October 23, 2019 Zikuski initiated trumped up disciplinary charges against Hardy which are ongoing.

52. That on or about November 14, 2019 Hardy’s counsel wrote to Mayor Richard David advising him of the pervasive racism ongoing within the Binghamton Police Department largely as a result of Capt. Ryan’s behavior and Zikuski’s acquiescence and/or ratification of the same.

53. Upon information and belief, the Mayor knew or should have known of the severe racism existing in the Department yet failed to take any steps in ameliorating the same and allowed it to flourish.

54. That after receiving specific information concerning Ryan’s behavior Mayor David did nothing to ameliorate the racism and the same is exemplified by the facts set forth herein, and the fact that David took no action to withdraw the disciplinary proceedings commenced against Sgt. Hardy.

55. That in addition to plaintiff and patrolman Marroquin being subjected to racist behaviors another Hispanic employee told colleagues that Ryan makes racist jokes relating to the Hispanic

heritage but is afraid to speak out because of the fear of losing his/her job.

56. That another minority subjected to Ryan's discriminatory behavior is Sgt. Daniel Flanders who is of Asian descent and consistently referred to by Ryan as "Short Round" who is a character in the Indiana Jones movie "Indiana Jones and the Temple of Doom".

57. That the Mayor and Chief of Police are policymakers within the City of Binghamton and have consistently failed to take any ameliorative action with regard to the severe and pervasive racism that adversely impacts every minority police officer employed by the City of Binghamton.

58. That the failure to act constitutes a ratification of said racist policies by policymakers acting on behalf of the City of Binghamton.

59. That as a result of the aforesaid the City of Binghamton is also liable to the plaintiff for compensatory damages in an amount to be proven at trial.

60. That the plaintiff has sustained loss of income, failure to move forward in his career, and suffered significant emotional distress, embarrassment, and mental anguish as a result of the discriminatory conduct complained of herein.

WHEREFORE, plaintiff respectfully request that the Court:

1. Award plaintiff compensatory damages against all defendants in an amount to be proven at trial.

2. Award plaintiff exemplary damages against defendants David, Zikuski and Ryan.

3. Direct defendant Zikuski to appoint plaintiff to the open Captain position, or in the alternative to receive consideration for the Captain position that is fair, impartial, and devoid of any racism.

4. Award plaintiff reasonable attorney's fees together with the costs and

disbursements of this action.

5. Award plaintiff such other and further relief as the court deems just and proper under the circumstances.

Dated: November 25, 2019
Binghamton, New York

s/Ronald R. Benjamin
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